

AMENDED IN SENATE APRIL 13, 2005

AMENDED IN SENATE MARCH 29, 2005

SENATE BILL

No. 274

Introduced by Senator Romero

February 16, 2005

An act to add Section ~~H29.5~~ 1099 to the Government Code, relating to public service.

LEGISLATIVE COUNSEL'S DIGEST

SB 274, as amended, Romero. Incompatible offices: elected and appointed positions.

Existing statutory law forbids ~~a local agency officer or employee to engage specified officers or employees from engaging~~ in any employment, activity, or enterprise for compensation which is inconsistent, incompatible, in conflict with, or inimical to his or her duties as ~~a local agency~~ an officer or employee or with the duties, functions, or responsibilities of his or her appointing power or the agency by which he or she is employed, except as specified. The common law forbids the simultaneous holding of 2 offices that exercise sovereign power that are incompatible, the test for which is satisfied in each of the following circumstances: (1) when one office is superior to and exercises some supervisory power over the other, or has the power to remove the incumbent of the other or to audit the accounts of the other, (2) when there are inconsistent functions or divided loyalties between the offices, or (3) when the nature and duties of the 2 offices render it improper, from consideration of public policy, for one incumbent to retain both.

This bill would, except as specified, provide that service on ~~a local~~ an appointed or elected governmental board, commission, committee, or other body shall be deemed to be inconsistent, incompatible, in

conflict with, or inimical to the duties of service on another ~~local~~ elected or appointed governmental board, commission, committee, or other body, if the service in the offices satisfies this common law test for incompatibility. It would require an elected or appointed member of one of 2 local governmental bodies in the above-described relation to resign prior to accepting election or appointment to the 2nd, and would forbid the exercise of any of the powers of the first after acceding to the 2nd.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 1129.5 is added to the Government~~
2 ~~Code, to read:~~
3 ~~1129.5. (a) Except as provided in Sections 1128 and 1129,~~
4 ~~and except as provided by local ordinance, service on a local~~
5 ~~appointed or elected governmental~~
6 SECTION 1. Section 1099 is added to the Government Code,
7 to read:
8 1099. (a) Except as otherwise provided by law, service on an
9 appointed or elected governmental board, commission,
10 committee, or other body shall be deemed to be inconsistent,
11 incompatible, in conflict with, or inimical to the duties of service
12 on another elected or appointed ~~local~~ governmental board,
13 commission, committee, or other body in any of the following
14 circumstances:
15 (1) Either of the bodies may audit, overrule, remove members
16 of, dismiss employees of, or exercise supervisory powers over
17 the other in any circumstance.
18 (2) There is any significant clash of duties or loyalties between
19 the offices.
20 (3) Public policy considerations make it improper for one
21 person to hold both offices.
22 (b) An elected or appointed member of one of two ~~local~~
23 governmental bodies described in subdivision (a) shall not accept
24 election or appointment to the second ~~local~~ governmental body
25 without resigning from the first, and shall not exercise any of the
26 powers of the first after acceding to the second.

1 (c) This section shall not apply to a governmental body that
2 has only advisory powers.

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